

**CITY OF NEWARK  
DELAWARE  
PLANNING COMMISSION  
MEETING**

**April 7, 2009**

**7:30 p.m.**

Present at the 7:30 p.m. meeting were:

**Chairman:** James Bowman

**Commissioners Present:** Ralph Begleiter  
Peggy Brown  
Angela Dressel  
Mary Lou McDowell  
Rob Osborne  
Kass Sheedy

**Staff Present:** Roy H. Lopata, Planning and Development Director

Chairman James Bowman called the Planning Commission meeting to order at 7:30 p.m.

**1. THE MINUTES OF THE MARCH 3, 2009 PLANNING COMMISSION MEETING.**

MOTION BY BEGLEITER, SECONDED BY DRESSEL, THE MINUTES OF THE MARCH 3, 2009 PLANNING COMMISSION MEETING WERE APPROVED AS RECEIVED.

VOTE: 7-0

AYE: BEGLEITER, BOWMAN, BROWN, DRESSEL, McDOWELL, OSBORNE, SHEEDY

NAY: NONE

MOTION PASSED UNANIMOUSLY

**2. REVIEW AND CONSIDERATION OF THE MINOR SUBDIVISION OF THE 1.76 ACRE PROPERTY AT THE NORTHWEST CORNER OF THE INTERSECTION OF ELM AND WOODLAWN AVENUES FOR FIVE SINGLE FAMILY DETACHED HOMES.**

Mr. Lopata summarized his report to the Planning Commission which reads as follows:

“On January 21, 2009, the Planning and Development Department received an application from John M. Mayer for the minor subdivision of the 1.76 acre property he owns at the northwest corner of the intersection of Woodlawn and Elm Avenues. The applicant is requesting minor subdivision to divide the site into five single family parcels for development by Robert Scott McKeown.

Please see the attached PELSA Company, Inc. minor subdivision plan and supporting letter. The Planning and Development Department’s report on the Mayer subdivision follows:

**Property Description and Related Data**

1. Location:

Northwest corner of the intersection of Elm and Woodlawn Avenues; in the vicinity of the Lumbrook and Stafford single family home subdivisions.

2. Size:

1.76 acres.

3. Existing Land Use:

Vacant, wooded lot.

4. Physical Condition of the Site:

The Mayer subdivision property is a wooded lot. The property is relatively level with a slope from its high point at the southwest portion of the property to the northeast.

Regarding soils, according to the United States Department of Agriculture's Natural Resources Conservation Service, the Mayer property contains Elsinboro Silt Loam soil on its western two-thirds and Delanco Silt Loam on the remainder of the site. According to the Natural Resources Conservation Service, these soils have "slight" to "moderate" development limitations for the uses proposed.

5. Planning and Zoning:

The Mayer property is zoned RS. RS is a single family residential zone that permits the following:

- A. One-family detached dwelling.
- B. The taking of non-transient boarders or roomers in a one-family dwelling by an owner-occupant family resident on the premises, provided there is no display or advertising on the premises in connection with such use and provided there are not more than three boarders or roomers in any one-family dwelling. An owner-occupant taking in more than two boarders, however, must apply for and receive a rental permit.
- C. The taking of nontransient boarders or roomers in a one-family dwelling by a non-owner occupant family resident on the premises, is not a use a matter of right, but is a conditional use, provided there is no display or advertising on the premises in connection with such use, provided there are not more than two boarders or roomers in any one-family dwelling, with special requirements including the requirement for rental permits.
- D. Churches or other places of worship, with special requirements.
- E. Public and Private Schools.
- F. Municipal Parks and Playgrounds; non-profit community centers for recreational purposes.
- G. Municipal utilities; street rights-of-way.
- H. Public and private swimming pools.
- I. Temporary construction and real estate buildings.
- J. Private garages as accessory uses.
- K. Other accessory uses and accessory buildings, excluding semi-trailers and similar vehicles for storage of property.
- L. Cluster development subject to Site Plan Approval as provided in Article XXVII.
- M. Public transportation bus stops.
- N. Bed and breakfast, with special requirements
- O. Student Homes, with special requirements

RS zoning also permits, with a Council-granted special use permit, the following:

- A. Police, fire stations, library, museum, and art gallery.
- B. Country club, golf course, with special requirements.

- C. Professional offices in residential dwellings for the resident-owner of single-family dwellings, with special requirements.
- D. Customary home occupations, with special requirements.
- E. Electric and gas substations, with special requirements.
- F. Day care centers, kindergartens, preschools, with special requirements.
- G. Public transportation bus or transit shelters.
- H. Swimming club, private (nonprofit).

Regarding RS zoning area requirements, the Mayer subdivision plan conforms to all the applicable specifications.

Regarding nearby properties, the land immediately to the west of the site, owned by the applicant, is zoned RS and contains a large single family home, detached garage, and the “Kirk’s Flowers” greenhouse buildings. The property to the north of the Mayer subdivision site is also zoned RS and contains a legally nonconforming dentist office, fronting on Kirkwood Highway. The lands east of the property across Elm Avenue are zoned RS and contain several single family homes. The properties south, southeast and southwest of the Mayer parcel are also all zoned RS and contain single family homes.

Regarding comprehensive planning, the recently updated Comprehensive Development Plan IV recommends “single family residential, low density” uses for the Mayer site. Plan IV defines, “single family residential, low density,” as areas designed for single family homes with densities ranging from 1 - 3 dwelling units per acre. Please note in this regard, that the Mayer subdivision plan calls for 2.84 units per acre.

### **Departmental Comments**

The City Planning and Operating Departments have reviewed the Mayer subdivision plan and have the comments below. Where appropriate, the subdivision plan should be revised prior to its review by City Council.

1. As indicated above, the Planning and Development Department notes that the Mayer subdivision plan, calling for five single family detached dwellings, conforms to the land use recommendations of the recently updated Newark Comprehensive Development Plan IV.
2. The Public Works Department indicates the following:
  - An overflow pipe and structure will be required to be installed from the stormwater facility to the catch basin on the east side of Elm Avenue.
  - The proposed street tree shown in the stormwater conveyance easement needs to be relocated.
  - The applicant should consult the Public Works Department, through the construction improvement plan process, concerning additional information required for the infiltration design and geotechnical report, and regarding related stormwater management specifications.
3. The Public Works Department and Parks and Recreation have indicated concerns regarding access to the stormwater management facility from Woodlawn Avenue. In order to improve access at this location, the bio-swale and pipe with the apron should be relocated slightly to the west to provide gentler side slopes on the east side of the bio-swale. As a result of this change, some grading may occur on the adjoining property to the west of the stormwater management facility area currently owned by the applicant (in addition to the grading shown on the plan).
4. Although not specifically required for minor subdivisions, because of the wooded nature of the site, the Planning and Development Department suggests that as a condition of approval, the applicants should identify trees to be preserved and

appropriate tree preservation measures, through the improvement plan process. The applicant should consult the Parks and Recreation Department regarding this matter.

5. The Electric Department indicates that electric service is available from Elm and Woodlawn Avenues. The Department also notes that a fee of \$60 per radio read meter will be required as well as a fee of \$2,700 toward the cost of transformers. Finally, the Department notes that no tree growing over 18 feet at maturity can be planted under the proposed aerial feeds to the homes.
6. The Water and Wastewater Department indicates that existing water laterals on Lots #4 and #5 are three-quarters inches in diameter; fire service would typically require a two inch lateral. Through the construction improvement plan process, the applicants should review this matter with a fire system design professional in conjunction with the Water and Wastewater Department. Finally, the Department notes that sanitary sewer service is available to the site.
7. The Parks and Recreation Department indicates the following:
  - Because of its size and inaccessible location, the Department suggests that the stormwater management “open space area,” to the north of the proposed stormwater facility be incorporated into Parcel #1.
  - Street trees should not be located adjacent to underground utilities or adjacent to proposed parcel lines.
8. The Building Department indicates that all dwelling units on the plan will be required to conform to the current City of Newark International Building Code requirements. The Department also notes that all homes on the property will need to have fire sprinkler systems installed.

### **Recommendation**

Because the Mayer minor subdivision plan calling for single family land use at the location follows the land use recommendation in Newark Comprehensive Development Plan IV, because the proposed single family dwellings correspond to the development pattern in the community, and because the plan conforms to all applicable City Code requirements, the Planning and Development Department suggests **that the Planning Commission recommend that City Council approve the Mayer minor subdivision plan, as shown on the PELSA Company, Inc. plan, dated January 14, 2008 [this may need to be corrected to refer to 2009], with the conditions in this report.**”

Mr. Bowman: Are there any questions from members of the Commission, initially, for Roy?

Mr. Begleiter: Roy, the recommendation on Lot #1 and the stub end of the stormwater management, what would the practical effect of that be? Would it mean that the owners of Lot #1 would be maintaining that property?

Mr. Lopata: It would be just a large rear yard for Lot #1. They can’t build a home on it or use it other than it would be an oversized lot. It would be a very deep lot like the kinds of lots we have on S. College Avenue and other parts of the City.

Mr. Begleiter: But, the City wouldn’t be responsible for maintaining that. What you are basically saying is that the City doesn’t want to have to maintain that property.

Mr. Lopata: We don’t want to maintain it because it is so difficult to get to. We try to avoid being in a back yard situation where this would be an isolated parcel surrounded by homeowners when you might as well let the homeowners own it, and they would probably be happy with it. Our level of maintenance would not be like a lawn. We

would leave it as woods, and that may be fine; and, hopefully, a homeowner would do the same. But, we would just as soon let it be a rear yard.

Mr. Begleiter: If that property became part of Lot #1, would the lot owners have the flexibility of locating the house differently on the lot?

Mr. Lopata: Yes, it could be a larger home, but they are limited to 20% lot coverage no matter what, and all the other requirements of RS.

Mr. Begleiter: That's all I wanted to know, whether they would still be required in some way to fit in that space in the front.

Mr. Lopata: They would have a much deeper rear yard, unless you wanted to require them to make sure the front setback aligned with the other homes. You could do that. On the other hand, that might add some variety and make it a more interesting property. So, it is very hard to tell in a small subdivision like this. Mr. Mayer's adjoining house itself is off on an angle. In any case, this change would make that a much larger lot than the others.

Mr. Begleiter: On page 4 of your report in paragraphs 4 and 5 where you are talking about the trees -- paragraph 5 says that you can't plant any that are bigger than 18 ft. at maturity because of the overhead electric lines that are likely to be placed there (if they aren't already there). Paragraph 4 talks about preserving large trees. I have not surveyed the trees at that site, but it seems to me that those two paragraphs may be in competition with one another. If there is an existing tree that is over 18 feet; that is a very large heavily wooded old lot, do they have to take it down to accommodate the electric lines?

Mr. Lopata: We would tend to work around that because we are trying to preserve the trees, and this is the new street trees that are planted. They are on the plan -- the little drawings -- we want to make sure they are not under whatever aerial feeds are located in area. Paragraph five would not require the developer to remove trees over 18 ft. in order to accommodate the electric line. That is what I am getting at.

Ms. Angela Dressel: Would it be better to say, "Finally, the Department notes that no street trees going over . . . ." Would that help to clarify it?

Mr. Lopata: Yes, that is fine.

Mr. Bowman: On the other hand, you wouldn't want to be planting a tree that would go over 18 ft. under the drop line either.

Mr. Begleiter: Of course not. That we understand, but if the tree is already there and it is over 18 ft., the issue is whether the Electric Division has the power to say, no, we are going to put our overhead lines in there and you have to take out this big old tree. The answer to that is no. So, that is fine.

Ms. Cass Sheedy: Roy, when you say "move," would the whole stormwater management area move to the west or just the bio-swale?

Mr. Lopata: Actually, the stormwater management facility would primarily stay. It is the grading that would change a little bit. It needs to be flattened out a little bit. Our people were concerned about being able to get around the actual facility.

Ms. Sheedy: Since it abuts right up to the property line, since Mr. Mayer is the developer, I would assume that he would be able to work something out.

Mr. Lopata: He and I have discussed it. He understands.

Ms. Sheedy: So, we don't have a problem with that not working.

Mr. Lopata: As far as I know, unless it became an issue since we have talked. It wasn't an issue a few days ago . . .

Ms. Peggy Brown: If you take out the .615 acres for the stormwater management which is to be dedicated to the City, then what acreage does that leave you with, for the five proposed houses?

Mr. Lopata: Say that again . . .

Ms. Brown: You are saying that .615 acres is to be dedicated to the City. So, essentially, you are taking it out of the development plan.

Mr. Lopata: It stays on the plan but it becomes public land.

Ms. Brown: Right. It is public land. So, then, what does that leave you with for the property to be developed?

Mr. Bowman: About 1.1 acres.

Ms. Brown: Well, my question is, we are starting out with close to two acres, supposedly, but in actuality when you finish taking out the land that would be public land . . .

Mr. Lopata: You need a stormwater facility whether it is public or private, so you are not “taking anything out.”

Ms. Brown: But it is not buildable land.

Mr. Lopata: Right, because we require that detention basin.

Ms. Brown: So, you are basically saying that there is only 1.6 acres left.

Mr. Lopata: No, you are building on 1.76 acres. It’s like if you put a driveway on a lot, that is still part of the property. It is a physical structure. I am not quite sure what you are getting at.

Ms. Brown: It seems to me that we are reducing the area that could be developed by taking out the stormwater management.

Mr. Lopata: We are not taking it out. The land is still there. It isn’t going anywhere.

Ms. Brown: The land is still there, but it is not buildable.

Mr. Lopata: You have to have a stormwater facility for every project.

Ms. Brown: Well, I don’t know but you are saying it is almost two acres but in actuality the buildable property is less than two acres.

Mr. Bowman: The buildable issue has nothing to do with what we are doing. Correct me if I am wrong, Roy. The total area is used for the density calculation.

Mr. Lopata: Right, you take everything on the site and you divide by the number of units, but the individual lots are the same size as the lots in the general area, including “taking out” this public land.

Ms. Brown: Are these lots comparable – excluding the Mayer property – to the surrounding lots?

Mr. Lopata: That is what I am saying. They are very similar. They are similar to and in some cases larger than the lots in Stafford, which is the subdivision to the east, and they are similar to the lots in the Lumbrook area.

Ms. Brown: What is the size of the houses?

Mr. Lopata: We will let the applicant talk about that.

Mr. Mike Paraskewich: I am from the PELSA Company, we are the engineers and surveyors on the project.

Mr. Lopata did an excellent job, I believe, describing this little subdivision. He covered all of the main topics that were discussed in the reports from the City departments. The stormwater management area -- the grading issue -- can be resolved by enlarging the graded area, or we could place a permanent easement on a section of Mr. Mayer's property. That would give you a little more area to have a legal right to come on to the site. It can be managed either way or both ways. There is no problem adding the rear property of the open space to Lot #1. One suggestion we might look at if it could still meet the density requirements, taking that area and conveying back to Mr. Mayer's other property just in case that ever gets developed and we need additional land back there to make the stormwater management area larger. But, of course, we would still have to meet the density requirement before we did that or we could just add it to Lot #1.

Mr. Lopata: Right. That is easy enough to do. That is a good suggestion in some ways. All the houses stay the same. We would give that back to Mr. Mayer. It gives him more room for the stormwater facility, the grading, which might take an inch or two from his property.

Mr. Paraskewich: The size of the houses -- we really haven't discussed it. I think they will be comparable to the area. I would imagine they would exceed between 2,500 and 3,000 sq. ft. for each house. That seems to be a conforming house type in that area.

The infrastructure is at the site. There is no problem tying in to the sewing and water. The storm sewer is accessible for us. We can access it through an easement between lots #2 and #3. We will have to put a conveyance system in there. We have a swale shown now but a conveyance system will go in here and connect to one of the existing catch basins.

Mr. Bowman: Is there anyone from the Commission that has any questions for the developer?

Mr. Begleiter: What is your development plan on this in terms of timing? Are you thinking about doing this sooner or later?

Mr. Robert McKeon: I reside at 893 Noxontown Road, Townsend, Delaware. I am the builder/developer. We are looking to do comparable sized houses in the area -- 1,800 to 2,000 sq. ft. is most likely -- not to exceed probably 3,000 sq. ft. We would like to start the project as soon as we possibly can.

Mr. Bowman: Is there anyone from the public that would like to speak?

Mrs. Jean White: 103 Radcliffe Drive. I have no problem with creating a minor subdivision of these five homes at this particular location. I just have a couple of questions. The first question is, are the neighbors on Woodlawn and Elm aware of your plans for this? I think that for a minor subdivision the City is not required to send out notices.

Mr. Lopata: That is correct. It is advertised through our website and the newspaper.

Mrs. White: Right, but people don't necessarily look at a website if they don't know something is happening.

Mr. Lopata: We have discussed with the applicant.

Mrs. White: Secondly, I guess for a minor subdivision you don't have to have a landscape plan so I was interested to know what street trees you plan to plant. I think there are nine trees maybe. Your street tree will have to be new. I know the lot is full of trees.

Mr. Lopata: Jean, he will do that in concert with the Parks Department. John is not the builder.

Mrs. White: I am looking at him because he is somebody that I know.

Mr. Paraskewich: The trees are designated on the plan.

Mrs. White: They are designated?

Mr. Paraskewich: The common name is Japanese Zelkova. There are 28 of them.

Mrs. White: Not always are Zelkovas used for the street trees. When I saw on the plan, I saw two for each of the properties.

Mrs. White: Okay, I didn't see 28, I saw nine. Two for each property on Elm and one.

Mr. Paraskewich: I'm sorry. I stand corrected. There are ten of them.

Mrs. White: Okay. Ten Zelkovas. The Electric Department in its notes on the Planning and Development Department report said what has already been referred to, no tree under 18 ft. on the aerials going to the houses, but the street trees I think if they are only 18 ft., they are going to be an ornamental, so I think there would be effort to put the ten street trees not where the aerial goes directly to the house. I would hope that otherwise we are not having legitimate street trees or having ornamentals.

Actually, I did go around there, but I didn't notice where the poles for the wires are but I wondered, is there any way to make the wires to these houses – the so-called lateral aerials – underground for this? Even though this is not a large development where you start from scratch, is there any way to make just for those five houses, the underground?

Mr. Lopata: I will have to look into that.

Mrs. White: It is just a question that I had. Even though it is a small area it might be possibly of use.

Mr. Lopata: They may be underground.

Mrs. White: That is true, but the note from the Electric Department talked about the aerial to the house.

Those of you were talking up here, but I was confused. The stormwater management area which has open area beyond it, there was talk among you about taking that land and putting as a further back yard, so to speak, of Lot #1, which is the one nearest to Kirkwood Hwy. But, the blueprint that I looked at didn't have. . .

Mr. Lopata: It is just the land to the west behind the stormwater management area. We are talking about two different things. One is the grading around the facility and the other is the land behind it toward Kirkwood Hwy. That would either be added to Mr. Mayer's house, which is apparently an option or added to Lot #1.

Mrs. White: But, the blueprint I looked at did not have that added to Lot #1.

Mr. Lopata: I didn't say it was added, it will be added.

Mrs. White: No, it wasn't. You were discussing something that is subsequent to the blueprint being drawn.

Mr. Lopata: That is a recommendation we are making based on the plan that is before us.

Mrs. White: Thank you. It is really a very nice older neighborhood in Newark. I think the houses look very nice and it is a pleasant neighborhood and so one hopes that the five new homes, as they say, would complement the neighboring houses and be varied, not five identical homes but have some variation that would make them look both different but complement the houses there.



Mr. Mayer: 7 Ash Avenue, Newark, Delaware, lifelong resident. I just wanted to take this opportunity to thank Mrs. White for her dedication to the City and I just happened to figure out over the last few months that nobody ever thanked Mrs. White for all the time and effort she puts in, but I figured out that Mrs. White spends a tremendous amount of time researching all of this. In fact you guys have four four-hour meetings a year to hear Mrs. White and I think she should be thanked for that.

Mr. Bowman: We will bring it back to the Planning Commissioners. Does anybody have any additional questions?

MOTION BY BEGLEITER, SECONDED BY DRESSEL, THAT THE PLANNING COMMISSION RECOMMENDS THAT CITY COUNCIL APPROVE THE MAYER MINOR SUBDIVISION PLAN, AS SHOWN ON THE PELSA COMPANY, INC. PLAN, DATED JANUARY 14, 2008, WITH THE CONDITIONS IN THE PLANNING AND DEVELOPMENT DEPARTMENT REPORT AND THAT THE PLAN BE REVISED TO SHOW THE REAR OF THE STORMWATER MANAGEMENT SITE AS PART OF THE ADJOINING MAYER PROPERTY TO THE WEST OF THE LOCATION.

VOTE: 7-0

AYE: BEGLEITER, BOWMAN, BROWN, DRESSEL, McDOWELL, OSBORNE, SHEEDY

NAY: NONE

MOTION PASSED UNANIMOUSLY

### **3. REVIEW AND CONSIDERATION OF THE MINOR SUBDIVISION, SPECIAL USE PERMIT AND A PARKING WAIVER FOR THE PROPERTIES AT 44-46 E. MAIN STREET FOR THREE UPPER FLOOR APARTMENTS.**

Mr. Lopata summarized his report to the Planning Commission which reads as follows:

“On February 25, 2009, the Planning and Development Department received an application from Locker Construction for the minor subdivision, special use permit, and a six space parking waiver for the properties at 44-46 E. Main Street. The applicants are requesting on behalf of the owners – MK Properties, LLC – development approval in order to renovate and reinstall three apartments on the upper floor of the two-story buildings on the site. Because the residential use on these properties has been abandoned for sometime, the “grandfathering” of the apartments has expired, necessitating these applications.

Please see the attached Landmark Engineering minor subdivision, special use permit and parking waiver plan, supporting letter, and building elevation drawing. The Planning and Development Department’s report on the 44-46 E. Main Street project follows:

#### **Property Description and Related Data**

1. Location:

North side of E. Main Street, approximately 280 feet from the E. Main Street/S. College Avenue intersection.

2. Size:

.237 acres.

3. Existing Land Use:

Two-story, adjoining buildings, with commercial/office [Peace a Pizza; Military Recruiting] on first floors; portions of Municipal Parking Lot #2 [monthly lot] to rear of buildings.

4. Physical Condition of the Site:

The 44-46 E. Main Street properties containing adjoining and approximately 4,400 square foot “footprint” buildings and a small paved parking area, with a trash dumpster.

In terms of topography, the site is relatively level, with a slight slope from high points on the northern portion of the site down toward E. Main Street.

5. Planning and Zoning:

44-46 E. Main Street is zoned BB. BB zoning permits the following:

- A. Retail and specialty stores.
- B. Retail food stores up to 5,000 square feet in maximum floor area, with special conditions.
- C. Restaurants, bakery and delicatessens.
- D. Banks and finance institutions.
- E. Offices for professional services and administrative activities.
- F. Personal service establishments.
- G. Studios for artists, designers, photographers, musicians, and sculptors.
- H. Repair and servicing, indoor and off-site of any article for sale, which is permitted in this district.
- I. Related indoor storage facilities as accessory uses with special requirements.
- J. Accessory uses and accessory buildings.
- K. Public parking garage and parking lot.
- L. Public transit facilities.
- M. Social club, fraternal, social service, union and civic organizations, except on ground floor locations.
- N. Photo developing and finishing.

BB also permits, with a Council granted Special Use Permit, the following:

- A. Retail food stores with more than 5,000 square feet in area.
- B. Drive-in and curb service for other than eating establishments.
- C. Fast-food restaurants with special requirements.
- D. Motels and hotels.
- E. Commercial in-door recreation and in-door theaters.
- F. Instructional, business or trade schools.
- G. Electric gas and telephone central offices and telephone central offices and substations with special requirements.
- H. Tower, broadcasting or telecommunications on existing buildings or structures with special requirements.
- I. Police and fire stations.
- J. Library, museum and art gallery.
- K. Church or other place of worship.
- L. Restaurant, cafeteria style.
- M. Apartments, except on ground floor locations, with special requirements.
- N. Restaurants with alcoholic beverages, with special requirements.

Regarding BB zoning area requirements, other than for off-street parking, the 44-46 E. Main Street development plan meets all the applicable Zoning Code requirements. Regarding nearby properties, the 44-46 E. Main Street site is adjacent on the east and west on the north side of E. Main Street to BB zoned parcels containing various commercial uses. A small portion of City Parking Lot #2 lies immediately north of the buildings on the site, with the UN zoned University of Delaware’s Carpenter Sports building further to the north. The land south of the site

across E. Main Street contains the BB zoned multi-story Galleria commercial facility.

Regarding comprehensive planning, the Newark Comprehensive Development Plan IV calls for “commercial (pedestrian oriented)” uses at the 44-46 E. Main Street location. In addition, the Plan’s Downtown Economic Enhancement Strategy suggests, “Downtown Core District” land uses for this site. The Strategy describes this district as:

“ . . . an area to be redeveloped with first floor specialty and traditional retail shops, with a balanced concentration of food and entertainment. Apartments and offices are proposed for upper floors. Any additional apartments, however, must be carefully and closely evaluated in terms of their impact on downtown traffic and parking; their compatibility with existing downtown buildings in terms of design, scale and intensity of development; the contribution of the overall project, including proposed apartments, to the quality of the downtown economic environment; and potential significant negative impacts on nearby established businesses and residential neighborhoods. Beyond that particularly to encourage owner occupancy downtown, the City may consider reducing the permitted density in the projects in this district for residential projects.”

Regarding gross residential site density, the 44-46 E. Main Street plan calls for 12.66 units per acre.

#### **BB District and Off-Street Parking and Option Procedure**

The BB District off-street Parking Waiver Program, adopted by the City to encourage quality pedestrian oriented development downtown, stipulates that the Planning Commission can reduce or waive the off-street parking standards in Zoning Code Section 32-45(a) after considering the following:

- “A. Whether the applicant has demonstrated the proposed use does not conflict with the purposes of the Comprehensive Development Plan of the City;
- B. Whether the applicant has demonstrated that the proposed use conforms to and is in harmony with the character of the development pattern of the central business district;
- C. Whether the applicant has demonstrated that the proposed use is not highway oriented in character or significantly dependent on automobile or truck traffic as a primary means of conducting business;
- D. That the proposed use will not adversely affect the health or safety of persons residing or working in the vicinity, will be detrimental to the public welfare, or injurious to property improvements in the vicinity;
- E. The Planning Commission may also consider the availability of off-street parking facilities, the availability of nearby adjacent public parking facilities (within 500 feet) that may be shared by the applicant and an existing or proposed use. In considering this subsection the Planning Commission may require that the applicant submit an appropriate deed restriction, satisfactory to the City, that ensures either the continued validation of and/or the continued use of shared parking spaces in connection with the uses and structures they serve;
- F. The Planning Commission shall consider the advice and recommendation of the Planning Director.

Please note also that the BB zoning parking waiver procedure permits City Council to review, modify, or deny Planning Commission approval, disapproval, or approval with conditions upon the recommendation of the Planning Director and/or the City Manager.”

Also regarding the requested parking waiver, our procedure specifies that applicants receiving such approvals must make a “payment in lieu of spaces” to the City to be used to improve parking downtown. The required payment for the requested six space waiver, based on a recently updated estimate of the cost of construction of surface level parking spaces provided by the Public Works Department (\$5,833), is as follows:

<u>Number of Spaces</u>	<u>Payment Required</u>
Five (5)	\$1,458.25 (5% of cost)
Six to Twenty-five (1)	<u>\$2,916.50 (50% of cost)</u>
TOTAL:	\$4,374.75

Comments regarding this “payment in lieu of spaces” and related comments regarding this issue are provided below under Departmental Comments.

**Status of the Site Design**

Please note that at this stage in the Newark subdivision and review process for projects fronting on Main Street, applicants are required to show the general site design and architectural character of the project. For the site design, specific details taking into account topographical and other project features must be included in the construction improvement plan. For architectural character, the applicants must submit at the subdivision plan stage of the process color scale elevations of all proposed buildings, showing the kind, color and texture of materials to be used, proposed signs, lighting and related exterior features; and, in addition, contextual color scale elevations showing the front Main Street facades of all buildings immediately adjacent to the property. If the construction improvement plan, which is reviewed and approved by the operating departments, does not conform substantially to the approved subdivision site and architectural plan, the construction improvement plan must be referred back to City Council for further review and approval. That is, initial Council subdivision plan approval means that the general site concept and the more specific architectural design has received City endorsement, with the developer left with some limited flexibility in working out the details of the plan -- within Code determined and approved subdivision parameters, to respond in a limited way to changing needs and circumstances. This does not mean, however, that the Planning Commission cannot make site design or related recommendations that City Council could include in the subdivision plan and agreement for the project.

Be that as it may, the 44-46 E. Main Street subdivision plan and supporting materials call for a full renovation of the interior of the second floor of the adjoining buildings to restore three apartments, complying with International Building Code and Fire Code requirements.

The plan for the site also calls for enhancements to the front façade of the structures on the site, including new upper floor window treatments just below the existing parapet wall that creates the illusion that one building is located on these adjoining properties. The site plan also calls for the donation of the rear portion of the properties (.09 acres), currently used for a portion of Municipal Parking Lot #2, to the City.

To evaluate the proposed architectural design, the Planning Commission may wish to consult the design review criteria in Municipal Code Chapter 27, Subdivision and Development Regulations Appendix XIII (d).

Please note, in this regard, that on a voluntary basis, the applicant will review the proposed elevation drawings with the Downtown Newark Partnership’s Design Review Committee during the day of your Commission public hearing on this matter. As a result, Design Committee comments will be made available to you as part of the Planning and Development Department’s oral presentation on this project.

## **Departmental Comments**

The City's Planning and Operating Departments reviewed the 44-46 E. Main Street plan and provided the comments below. Where appropriate, the minor subdivision plan should be revised prior to its review by City Council. The Departmental comments are as follows:

1. The Planning and Development Department believes that the proposed renovation of residential uses for the upper floor of the buildings at 44-46 E. Main Street, coupled with the applicant's land dedication of the property used for parking by the City at Parking Lot #2, corresponds directly to the land use guidelines for downtown redevelopment at this location outlined in Comprehensive Development Plan IV.
2. As a condition of approval, to limit the impact of the proposed apartments on downtown parking, the Planning and Development Department suggests that each dwelling unit should be restricted to a maximum of four tenants in the form of deed restrictions and that all tenants shall be informed in writing that no off-street parking monthly permits will be available at the 44-46 E. Main Street site for their use in Lot #2.
3. The Planning and Development Department suggests, in light of the applicant's proposal to dedicate to the City a portion of the site currently leased within Lot #2, that the normally required parking waiver fee be waived. Please note, in this regard, that Zoning Code Section 32-45(b) specifically indicates that as part of its review of parking waiver fees the Planning Commission should consider, "land donations," if any.
4. The Planning and Development Department also suggests that the Planning Commission consider recommending to City Council that as a condition of approval the applicant show upgrades to the first floor facades of the existing buildings in the building elevation drawings for Council's review.
5. The City Electric Department indicates that electric service can continue to be made available to the site.
6. The Building Department indicates the following:
  - All new construction and rehabilitation must be designed in accordance with the requirements of the International Building Code, including fire wall and related fire safety requirements at the property line between the buildings. The applicant should review these issues with the Department.
  - All new construction at the site will be required to be sprinklered.
7. The Water and Wastewater Department indicates the following:
  - Through the construction improvement plan/building permit process, the applicant should coordinate with the Department water meter specifications and fire flow requirements.
  - The cost of meters will be the responsibility of the applicant.
  - Prior to the issuance of building permits, the condition of the sewer lateral needs to be verified by the applicant.

## **Recommendation**

Because the proposed 44-46 E. Main Street project, with the Departmental recommended conditions, will not have a negative impact on nearby and adjacent properties, because the project conforms to the land use recommendations in Comprehensive Development Plan IV, because the proposed residential use conforms to the development pattern in the downtown area, and because the proposed land dedication of a section of this site currently leased to the City will help improved downtown parking, the Planning and Development Department suggests **that the Planning Commission approve the 44-46 E. Main Street parking waiver, with the condition that a portion of the site indicated as, "lands to be conveyed to City of Newark," on the Landmark Engineering plan, dated**

February 18, 2009, be conveyed to the City upon the issuance of the certificate of occupancy at the site, and that the Commission make the following recommendations to City Council:

- A. That City Council, with the conditions in this report, approve the 44-46 E. Main Street minor subdivision plan, as shown on the Landmark Engineering plan, dated February 18, 2009; and,**
- B. That City Council, with the conditions in this report, approve the 44-46 E. Main Street special use permit for apartments in the BB district as shown on the Landmark Engineering plan, dated February 18, 2009.**

Mr. Bowman: Are there any initial questions for Roy from the members of the Commission?

Ms. Sheedy: I'm not sure if this is a question for Roy or for the developer, but is this the same number of apartments that was in the building before?

Mr. Lopata: Yes.

Mr. Bowman: Roy, on page #6, item #6, the Building Department indicates the following that all new construction on the site will be required to be sprinklered.

Mr. Lopata: That is the upper floor.

Mr. Bowman: Well, it makes no sense to have residents on the second floor of a commercial property particularly one with a pizza oven in it.

Mr. Lopata: I stand corrected. I assumed that is already sprinklered.

Ms. Dressel: Their letter said that the whole building will be sprinklered.

Mr. Bowman: Code required or not, it is the proper thing to do.

Mr. Joe Charma: I am with Landmark Engineering. Tonight I am here to represent the owners of 44-46 E. Main Street with their project for building improvements on those two properties. Tonight I have with me Dan Hoffman from Design Collaborative. He is the architect on the project, and the project manager, Roy Locker, from Locker Construction Company.

As usual, Roy does do a great job summarizing all of the issues that are entailed in these projects. We are here to seek Planning Commission approval of three existing apartment units that were last occupied in 1997, according to the Building Department records. The owners intend on renovating the existing apartments into three two-bedroom units with updated amenities and modern energy efficient building systems. Since the prior apartments have been historically documented, I would like you to think about this as a request to renew an existing use rather than a request to approve a new use. Along with the approval of the prior use, we are now required to obtain a special use permit for apartments downtown. Had the prior use not been allowed to expire, we would not be asking for this approval, but the owners were lax with regard to regulatory statutes as well as to the physical upkeep of the building, which is quite obvious. It is in pretty much disrepair. The owners intent to remove the architecturally out of character T11 plywood covering on the second floor windows and to make way for double hung divided light windows, which will drastically improve the appearance of that building and bring new life and excitement to its Main Street façade.

The interior of the building will be brought up to current fire and life safety standards by adding fully automatic sprinkler systems and other fire protection controls to the existing retail space and to the three apartments.

Again, because the prior owners allowed the apartment use to expire, we must also ask the Commission to consider approval of a six-car parking waiver as there is no opportunity on the site to add additional parking spaces. The properties currently have eight existing parking spaces located on one of the properties, which is part of City Lot #2 which is a monthly lease lot. The owners agree to donate approximately .009 of an acre to the City in lieu of the fee required for the six parking spaces.

In closing, since this project conforms reasonably with or can be brought into compliance with all current City regulations and that the three apartment units physically exist along with the fact that the project conforms to the land use recommendations in the Comprehensive Development Plan and the project is consistent with the downtown mixed use redevelopment strategies encouraged by the City, we ask the Planning Commission to recommend approval of this project to City Council. Thank you and we will entertain any questions you may have.

Mr. Bowman: Are there any questions from the Commissioners?

Ms. Dressel: You alluded to it and I just want to make sure. Are these new owners of the building, not the same ones that allowed it to fall into disrepair?

Mr. Charma: Yes. They are new owners. They apologize. They could not be with us tonight. They are working.

Ms. Dressel: Roy had mentioned in his report doing something to the lower level to enhance the streetscape there. Is there any plan to do that or is this rendering that we have, the extent of the plan at this point?

Mr. Charma: At this point, we actually met with the Design Review Committee.

Mr. Lopata: I'm sorry; I intended to review their comments as part of my opening remarks. Let me do that now.

As I mentioned in my report, the Design Committee was going to meet today and they did and recommended in favor of the project. They indicated that it met all the guidelines. They noted the proposed windows are an improvement. In terms of preservation, the project improves the existing building. They did suggest some architectural elements be added in the roof and cornice lines. They noted that the changes being submitted improve the façade, "in the direction of the Design Guidelines." That is the comment that I have from the Design Committee.

Mr. Charma: With that said, there was some discussion about the existing storefronts. At this particular time we are not intending to change those storefronts because they are, actually, in really good condition. They are pretty current. Could they be something different? Perhaps. There is no plan on doing that. If you go there and look at it now, on one side looks green. We wondered if it was painted, but it was moss growing on the building. That is going to get power washed and the stucco is going to be power washed and perhaps painted after it is power washed and we see what it looks like. We talked about some other gingerbread on the façade to kind of spruce it up and give it a little more character.

Mr. Lopata: For example, regarding symmetry how about adding another awning to the façade so that the building would have two awnings. You have an awning on one side, why not an awning on the other?

Mr. Charma: Something like an awning or in those lights to spark up the front façade. We actually talked about doing something on the corners – adding some kind of architectural detail.

Mr. Lopata: Our recommendation was that the applicants do a little bit of something on the front first floor facade, recognizing that clearly the thing that needed the most work was the upper half of the buildings. We felt this was an opportunity to make the whole building look as good as possible.

Mr. Charma: I think a good example is, if you look at the Caffé Gelato building, that building is kind of a plain looking building, but because of paint, flower boxes and things like that, and of course, the patio that is there, it has really sparked that building.

Mr. Lopata: Paint, flower boxes, quality signage and a canopy.

Mr. Charma: You can do some relatively inexpensive improvements to the façade like that that will really bring it to life. Adding those divided light windows is going to make a tremendous change in that façade.

Ms. Dressel: I definitely agree with that, it is just that in your letter it says that you are going to make changes to the streetscape and I would like to see it done uniformly to the whole front of the building.

My other question is, because you are going to end up putting the sprinklering, as you said, into the existing retail space, are those businesses going to have to move out for a period of time or . . .

Mr. Charma: They won't have to move out, but there might be a few days here or there or weekends. We can kind of work around their schedule. The pizza place is open at least six days a week, and obviously, we are going to want to make sure the tenants stay happy because you want to keep your tenants.

Ms. Dressel: Part of my concern is with all of the work going on upstairs, what is going to happen to your tenants downstairs? Are they going to be able to stay open during the time of renovations?

Mr. Charma: I believe so. I think most of the work upstairs is going to be new partition walls – taking walls out and adding walls. There is not any real structural work; it's all interior kind of fit out work. That can be done with minimal intrusion on the existing tenants.

Ms. Dressel: Along with the exterior of the building, the front of it, what about the sides of it. I drove by and took a look at it tonight. The one side is pretty run down looking, and I know you are going to be adding these windows; will you be doing work on the sides as well? Will there be improvements to that because we don't have any drawings of that?

Mr. Charma: I just asked the project manager and the answer is yes.

Mr. Roy Locker: Locker Construction, representing the owners also. Yes, the sides will be dealt with. There are actually holes in the wall in some places. Those will all be bricked back with matching brick. We will repoint all the mortar joints that are in bad condition, clean it up and as much of the utilities that can be rearranged or moved or reorganized all of that will be done.

Mr. Begleiter: Joe, will the windows on the side be replaced also?

Mr. Charma: Yes, I think if you look at the condition of the building and you actually go through and you start poking wood, you will find that it needs to be replaced.

Mr. Begleiter: These are actually two separate buildings. What are they inside? Are they apartments? Are they separate inside, too?

Mr. Lopata: They are going to have to be separate because of the fact that they are on a property line. They will have to have a firewall between them.

Ms. Dressel: Between the two buildings or between each apartment?

Mr. Lopata: I assume it is two and one unit because of the size. So, there will be two apartments on one side and one on the other and they have to be separated.

Mr. Dan Hoffman: DCI Architects. To answer your questions, yes, Ralph, there are two apartments over top of the National Guard facility and there is the one in what originally was part of the owner occupied store that was there before the Peace a Pizza side and then it eventually became an apartment. There is an existing dividing wall that separates the two sides. We are still working on the interior layouts, but as of right now they will remain separated.



Mr. Begleiter: Maybe this is a question for you, Roy. The façade on the front makes it look like a single building. The project is a single project. What is the rationale for keeping them as two separate buildings?

Mr. Lopata: There is no rationale other than now it is two separate properties and under the Building Code requirements you have to have the firewall in case they are sold separately. If we started from scratch and there was no property line there, these would be built as one building. There are two different tenants and two different addresses. The façade is a fake front. If you look at an aerial photograph, which I did, you can clearly see it is dropped down in the front. It is an illusion.

Mr. Begleiter: In my mind it would make sense for the developer to say, since we are developing this as a single project, you would have much more flexibility on the upper level if you had it as a single project, why . . .

Mr. Lopata: Then they can't sell it separately someday. That is the reason.

Mr. Hoffman: That is one discussion we did have this morning.

Mr. Begleiter: You talked about that and decided that you wanted to keep the flexibility and be able to separate it?

Mr. Hoffman: We have not gone back to the owners with that.

Mr. Lopata: They will come back in ten years and say that they want to subdivide it because we would like to sell off a part of it. There is no advantage to it other than it makes it a little bit easier inside. The outside will look the same.

Mr. Begleiter: There is a big advantage inside, among other things, you would gain all the space wasted with the firewall. But, that is up to the developer, obviously. I was just curious.

Mr. Hoffman: That is one discussion we had this morning. It would make my life a little easier designing on the inside the apartment spaces. I would have a little more flexibility. Right now the plan is for two and one. Again, it came up again this morning but we haven't had a chance to talk to the owners.

Mr. Begleiter: In my mind there would be flexibility in terms of whether you would want residential on the second level. Right now you obviously do because that's the only thing that can sell downtown, but as Joe knows from a previous project, sometimes there is an advantage to having a large space on the upper level that you could use to benefit a business that might want to have a large space on the upper level. That wouldn't be possible the way this is set up.

Mr. Charma: I would just like to add that the way it is currently configured it is set up as an owner occupant. It could be sold as a condominium. One unit right now, the other one divided. So, I think that is the direction we are hearing from this body and Council is going to try to encourage that. It is an existing opportunity.

Mr. Bowman: Also keeping it the way it is with a separating firewall and the sprinkler systems make it a much safer building. You have a higher hazard occupancy in a restaurant on that one side, so it is nice to have those split apart. And, then your problem remains more vertical and doesn't tend to become horizontal as well as vertical when you have a problem.

Ms. Brown: Who are the owners?

Mr. Charma: The Yong's.

Ms. Brown: And where are they?

Mr. Charma: They are working this evening.

Ms. Brown: Do they live around here?

Mr. Locker: The answer is yes, they live around here. The address, I don't know it. I think it is on the application forms. They own the Mayflower Restaurant in the Newark Shopping Center and that is where they will be until 11:00 tonight.

Ms. Brown: Who is going to manage the property?

Mr. Locker: At this moment their plan is to manage it themselves. They are managing their tenants they have now themselves.

Ms. Brown: And where do they have tenants elsewhere?

Mr. Locker: Just these tenants here. They have no other properties that I am aware of.

Ms. Sheedy: I have one question and one request. My question is, where is the entrance to the apartment over Peace a Pizza? I assume it is off the back of the building.

Mr. Charma: Currently it is inside Peace a Pizza. There is a stairwell. As Mr. Hoffman mentioned, that Peace a Pizza building evolved. It was an owner occupied business with the apartment above. If you go into Peace a Pizza at the right southeast corner of the building, there is a door right there and a stairway that goes up to the second floor. We are going to have to figure out how that all works. There is the alley that is here which is part of their property. They could actually take access to that apartment through that stairwell. It would require some reworking.

Mr. Lopata: The current method is not going to work.

Mr. Charma: You don't want people walking through the business to go to the apartment.

Ms. Dressel: They would only be able to get in their apartment between 10 a.m. and 10 p.m.

Mr. Charma: That is the way it is currently. We haven't worked out those details, but that is our thinking. We are already thinking about how that is going to work.

Mr. Bowman: Keep in mind that however they do it they have to meet egress and access requirements under the Building Code for safety reasons so they have to do that.

Mr. Charma: That does, Jim, bring up an excellent point. Having that location close to that corner is quite close to Main Street. It is as close as you can get to Main Street being the fire lane. You are right there.

Ms. Sheedy: I would assume, then, that the apartment over Peace a Pizza because of the firewall and where the entrance is and so on, if at some point Peace a Pizza or some other restaurant at that location wanted to expand, they could do that. Right? Some restaurants have a second floor balcony dining room or something like that.

Mr. Charma: I guess they could but that would likely require a change in use.

Mr. Lopata: They would have to meet the Building Code requirements. They would need a parking waiver, more than likely.

Mr. Bowman: Plus, if you put a place of public assembly on that second floor, no matter what the size is, you are going to have egress problems.

Mr. Charma: You would have to have a second means of egress.

Ms. Sheedy: I also have a request. We have been talking about changes to the street level façade. One thing that always bothers me every time I walk by these two buildings is that the eye perceives it as a single building, but I guess the cornice – I don't know what the proper term would be – that is between the first and second floors?

Mr. Charma: It is just a dividing band. For the signage?

Ms. Sheedy: Yes. They are different colors and it's very jarring when you look and see the different colors and everything else is symmetrical. So my request is can you do something to make that dividing strip be more unifying instead of esthetically dividing the way it is now?

Mr. Charma: We talked about that this morning. That will happen. We are going to paint it. What happened when Peace a Pizza moved into the building, they kind of spruced up their half of the building and the other half was left like it is? That will all be brought into uniformity along with the upper cornice. Whatever is done, we are going to try to make all that match so it has more of a homogeneous look to it.

Ms. Sheedy: Peace a Pizza I think is a nice looking storefront. It would be lovely if the whole building front was in that vein.

Mr. Lopata: Cass, it is sort of getting to the symmetry thing that I was talking about before with the canopies. Of course, what I have thought about is, part of it depends upon what kind of sense of humor the military has, because if they put a canopy with a peace sign in front of theirs as well, it would be symmetrical!

Mr. Dressel: Yes, next to Peace a Pizza.

Ms. Sheedy: That has always seemed like a good thing.

Mr. Begleiter: That's why you couldn't make them the same building.

Mr. Charma: They need to have a hawk on their canopy.

Ms. McDowell: I had a question about the entrances, so I got half of my question answered. The entrance to the side with the two apartments, are both apartments accessible from the front?

Mr. Charma: Yes. That entrance exists now. You can see it, it exists right here on the right side of the building.

Ms. McDowell: Does a hallway go the length back?

Mr. Charma: Yes.

Ms. McDowell: So the only windows they have are in the front and the back.

Mr. Charma: That is correct. Because this is right on the property line, you can't have any windows. That is a Building Code violation.

Mr. Begleiter: But, there are windows on it.

Mr. Charma: Are there?

Ms. McDowell: It looks like there are.

Mr. Begleiter: Are those windows in the hallway? I didn't realize that. That doesn't make any sense. The hallway must be on the other side.

Mr. Charma: The hallway is on this side. It comes right up this side.

Mr. Hoffman: Behind that door is a set of stairs. You go to the top of the stairs and make a 90° turn to the left. You have one apartment in the front; you have one apartment in the back. Joe is correct. That side of the building is on the property line, within three feet of it so we are not allowed to have any windows on that side of the building.

Mr. Begleiter: So, you are going to close those windows up?

Mr. Hoffman: They are already boarded up. That condition predates us. When we bring everything up to Code we have to follow the new Code. All the windows in that building will be either in the front or the back.

Mr. Begleiter: So, there won't be any windows on that side of the building. They will be closed up.

Mr. Hoffman: They will be all closed up.

Mr. Charma: We share a similar concern. By Code, Dan is also going to have to provide a certain amount of natural light and ventilation to the building, so we are going to have to come up with a creative way of doing that and still comply with the Building Code and Fire Code.

Mr. Bowman: Are there any comments from the public?

Mrs. Jean White: 103 Radcliffe Drive. To start let me say that I support making the second floor livable space again in the form of three apartments of which it was before. It is a building of long standing on Main Street and that second floor should be used and not sitting vacant as it is now. I think of the building as it used to be when we first moved to Newark. At that time Grassroots was actually in one of the two stores on either side and part of the State Theatre building and somewhat shortly after that moved to this building. So, I think of this as the Grassroots building, which eventually Grassroots moved to the Opera House. At that time, it was a very charming building. The windows as you see now were not the way they are now. They were nicer looking and the building had two recessed entries that . . .

Mr. Bowman: Mrs. White, we appreciate the history lesson but would you . . .

Mrs. White: Yes, I want to get into what the building is looking like, I am almost finished with this point. It had two recessed entries, both of which were used for Grassroots and people who walked into the store could go on either side of the store. If there had been a firewall, the firewall wasn't there because it was quite open and you could go to either side of what I now learned is two buildings. It seemed like one building not only by the front but when you were in Grassroots going back and forth. I don't know when Peace a Pizza and the other side went in if they rebuilt that firewall, but there was no firewall or at least there were big empty parts of it back then. So, I am raising that issue, and I am raising it because there has been a lot of discussion about fire safety.

Mr. Bowman: I think that has already been answered by the builder.

Mrs. White: I do want to say that this is a case of demolition by neglect, and there were people who kept asking the then owner to do something about it. It actually had a very nice pressed tin type ceiling on the first floor. That is either there or taken out but it isn't visible any more.

I have a couple of questions. The windows that are shown in the plan, in the middle is a double window and if the property line remains down the center between the two buildings. . .

Mr. Lopata: It isn't the center, Jean, it is set over to the left.

Mrs. White: This is not the center?

Mr. Lopata: No. That is why it is a real illusion. It is about two-thirds over.

Mrs. White: Thank you. I didn't realize that. I figured the two buildings were symmetrical so the larger part of it to the right over the National Guard building. That answers my question. I was wondering how the windows are going to be split. Thank you.

Again, a question about the entrance to the apartment over the Peace a Pizza at the moment it is within the Peace a Pizza and is it in the back or the side? Is that what I understood?

Mr. Lopata: In the front.

Mr. Charma: Inside as you face the building it will be to your left. If you walk in the front door and you turn left, you are going to see the door and the stairway that goes up to the second floor. There is a table that sits in front of the door.

Mrs. White: So, to make it Code compliant, you can have that entrance from the outside from the driveway. Is that what you are saying? Another question I had was, in order to install the automatic sprinkler system, will a new larger pipe have to connect to the main water pipe underneath Main Street or was that done already? I didn't remember that it had been done. And, that means tearing up Main Street and the pipe is closer to the opposite side. It is not on the opposite side?

Mr. Charma: It is right in the center.

Mrs. White: So, this is a cost to the development but they do it. I believe when DelDOT paved Main Street and then if anybody tears that up within the first five years or something – is that no longer true – that street pavement on either side of where the lateral water main goes in order to redo the street. I understood the cost was \$75,000 to put in the water main. Is that still not true?

Mr. Bowman: Mrs. White, that is going to be taken care of and I think we are getting a little far down . . .

Mrs. White: My main question was you have to put a water main to it.

Mr. Lopata: Jean, they have to do it. It is their responsibility.

Mrs. White: Getting to the .09 acres to be added to the City that is part of Lot #2 and behind the two buildings. My question is, there are eight parking spaces and they are part of Lot #2, but are any of those reserved for either or both of the two businesses?

Mr. Lopata: No.

Mrs. White: Also, in the Planning Department report in talking about the Peace a Pizza building part, part of the entranceway to Lot #2 is owned by the Peace a Pizza building. Am I correct?

Mr. Lopata: They need access to their trash in the back.

Mrs. White: I am interested to know how much the City is paying to lease the land for Lot #2. Even after the .09 acres is deeded to the City, there will still be two-thirds of the access way back to Lot #2, I can see why it would hard to deed that to the City, but I would like to ask that there be no cost for Main Street to here. The City is getting the .09 acres in the back.

Mr. Lopata: We don't have any cost for that now.

Mrs. White: There is no cost for the access way?

Mr. Lopata: No.

Mrs. White: Well, nevertheless, I guess I would feel happy if it could be formally stated that the land that is part of these two buildings that is part of that access way that it is stated that there is no cost to the City in the future for that entrance way. I think that is useful to particularly state.

Mr. Bowman: We are back to the Commission. Any further questions for the developer or Roy? If not I will entertain a motion.

Mr. Begleiter: I would like to call attention to page #6, numbers 2 and 3 to be sure that not just a suggestion but that we are recommending that the dwelling units be limited to four

tenants in the form of a deed restrictions and that written notifications be included in those deeds that no off-street parking is available in connection with the apartments in those units.

Mr. Lopata: I should note for the record that I always use the term “suggest” to be polite.

Mr. Begleiter: I would suggest that the Commission recommend it.

Mr. Lopata: It is not a suggestion when you do it.

MOTION BY BEGLEITER, SECONDED BY DRESSEL, THAT THE PLANNING COMMISSION TAKES THE FOLLOWING ACTIONS:

- A. THAT THE PLANNING COMMISSION APPROVE THE 44-46 E. MAIN STREET PARKING WAIVER, WITH THE CONDITION THAT A PORTION OF THE SITE INDICATED AS, “LANDS TO BE CONVEYED TO CITY OF NEWARK,” ON THE LANDMARK ENGINEERING PLAN, DATED FEBRUARY 18, 2009, BE CONVEYED TO THE CITY UPON THE ISSUANCE OF THE CERTIFICATE OF OCCUPANCY AT THE SITE.
- B. RECOMMEND THAT CITY COUNCIL, WITH THE CONDITIONS IN THE PLANNING AND DEVELOPMENT DEPARTMENT REPORT, APPROVE THE 44-46 E. MAIN STREET MINOR SUBDIVISION PLAN, AS SHOWN ON THE LANDMARK ENGINEERING PLAN, DATED FEBRUARY 18, 2009; AND,
- C. RECOMMEND THAT CITY COUNCIL, WITH THE CONDITIONS IN THE PLANNING AND DEVELOPMENT DEPARTMENT REPORT, APPROVE THE 44-46 E. MAIN STREET SPECIAL USE PERMIT FOR APARTMENTS IN THE BB DISTRICT AS SHOWN ON THE LANDMARK ENGINEERING PLAN, DATED FEBRUARY 18, 2009.

VOTE: 7-0

AYE: BEGLEITER, BOWMAN, BROWN, DRESSEL, McDOWELL, OSBORNE, SHEEDY

NAY: NONE

MOTION PASSED UNANIMOUSLY

There being no further business, the meeting adjourned at 8:07 p.m.

Respectfully Submitted,

Elizabeth Dowell  
Secretary, Planning Commission